



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

MAY - 5 2017

OFFICE OF
GENERAL COUNSEL

The Honorable John Barrasso
Chairman
U.S. Senate Environment and
Public Works Committee
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
U.S. Senate Environment and
Public Works Committee
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

Thank you the opportunity to respond to letters that Administrator E. Scott Pruitt received on March 21, 2017, April 7, 2017, and May 2, 2017, in which he was asked for specific information related to the actions undertaken by him as Administrator of the United States Environmental Protection Agency, to comply with federal ethics obligations. As the Designated Agency Ethics Official (DAEO), I am writing on behalf of the Administrator.

My staff and I have been working assiduously with the Administrator to ensure that he complies fully with his ethics obligations. Enclosed please find his signed recusal statement. As you can see, Mr. Pruitt has avoided participating in particular matters that affect his former employer, the State of Oklahoma, as a specific party. In addition, he has not participated in nor will he participate in any litigation in which the State of Oklahoma was a party, petitioner or intervenor.

We appreciate your continued interest in ensuring that the EPA provides effective ethics advice and counseling to all of our employees. If you have further questions, you may contact me at minoli.kevin@epa.gov or (202) 564-8040, or Justina Fugh, Senior Counsel for Ethics, at fugh.justina@epa.gov or (202) 564-1786.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K SQ.", likely representing Kevin S. Minoli.

Kevin S. Minoli
Designated Agency Ethics Official
Acting General Counsel

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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THE ADMINISTRATOR

MEMORANDUM

SUBJECT: My Ethics Obligations

FROM: E. Scott Pruitt
Administrator

TO: Acting Assistant Administrators
Acting General Counsel
Inspector General
Acting Regional Administrators

This memorandum provides you with written notification regarding my ethics obligations. I have conferred with the Office of General Counsel's Ethics Office (OGC/Ethics) and understand that I must recuse myself from matters in which I have a financial interest, or a personal or business relationship. I also understand that I have certain obligations to my state bar and also under the President's Ethics Pledge that I have signed. This recusal statement addresses all of my ethics obligations.

Obligations Under the President's Ethics Pledge

I understand that I have ethics obligations with respect to my former employer and my former client, the State of Oklahoma. The President's Ethics Pledge provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the pledge that regard former employer and former client do not apply to me. The Executive Order defines "former employer" to exclude state government,¹ and the Office of Government Ethics has determined that this same exclusion applies to the definition of "former client."² Therefore, OGC/Ethics has confirmed that I am not subject to the additional pledge restrictions regarding former employers or former clients.

Ethics Obligations Under the Impartiality Provisions

Pursuant to federal ethics rules, I understand that I have a one-year cooling off period with my former employer and former client. I also understand that I have a "covered relationship" with certain

¹ See Exec. Order 13,770, Section 2(j), which provides that "former employer" does not include ... State government."

² See Office of Government Ethics Legal Advisory 17-02 (February 6, 2017), which states that, "[w]ith respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE's prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders," and Office of Government Ethics Legal Advisory DO-09-011 (March 26, 2009), which states that "based on discussions with the White House Counsel's office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer."

(b) (6)

To demonstrate my profound commitment to carrying out my ethical responsibilities, while I am the Administrator of the United States Environmental Protection Agency, I will not participate in any active cases in which Oklahoma is a party, petitioner or intervenor, including the following:

Case Name	Citation
(b) (6))) §1 (6))
A	n
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P.A.	

I understand that this commitment is longer than is required by the federal impartiality standards, but I am taking this action to avoid even the appearance of any impropriety under federal ethics or professional responsibility obligations.

With respect to cases involving EPA in which Oklahoma joined other states in filing an amicus brief, I understand that Oklahoma was not a party to the litigation itself. I have informed the Designated Agency Ethics Official (DAEO) that Oklahoma itself neither authored the amicus briefs nor otherwise participated in the litigation in any way. Most of those cases are resolved, except for *Building Industry Association of the Bay Area, et al. v. Department of Commerce, et al.* (the U.S. Supreme Court denied *certiorari*); *Sierra Club et al., plaintiffs-appellees v. Regina McCarthy in her capacity as Administrator of the United States Environmental Protection Agency, defendants-appellees; State of Arizona et al. intervenor-plaintiff-appellants*, No. 15-15894 (9th Cir.), on appeal from N.D. Cal., No. 13-cv-03953-SI (this case is fully argued and briefed is awaiting decision only); *Wyoming v. EPA*, Nos. 14-9512 and 14-9514 (10th Cir.) (the standard of review argument advanced in the amicus brief that Oklahoma joined was uncontested on review); and *National Association of Manufacturers, petitioner, v. U.S. Department of Defense, U.S. Army Corps of Engineers, and U.S. EPA, et al., respondents*, No. 16-299 (S. Ct.) (U.S. Supreme Court granted *certiorari*, briefing for petitioners and supporting persons is complete, and case will be argued in the upcoming October term).

Thus far, I have not participated in any of the cases listed in this recusal statement officially at all and will continue to recuse for now. In the event that I wish to participate, I will seek an ethics determination from the DAEO, who will apply the federal impartiality standard set forth at 5 C.F.R. § 2635.502. I understand that my professional responsibility obligations may impose consent requirements in order to participate. I will provide notification of such consent, if sought and obtained, to EPA's ethics officials.

Screening Arrangement

In order to help ensure that I do not participate in matters relating to any of the entities listed above, I have taken or will take the following steps:

1. I am instructing Ryan Jackson, Chief of Staff to screen all EPA matters, including existing litigation, directed to my attention that involve outside entities or that require my participation, to determine if they involve any of the entities or organizations listed above.
2. Until such time as a Presidentially Appointed Senate confirmed appointee is confirmed and sworn into a position such as the Deputy Administrator, General Counsel or Assistant Administrator, I am designating the Chief of Staff to take appropriate action or refer it with the Agency for appropriate action or assignment, without my knowledge or involvement.
3. I will provide the Chief of Staff and Sarah Greenwalt, Senior Advisor to the Administrator, with a copy of this memorandum so that they may fully understand the purpose and scope of my

recusal obligations and this screening arrangement. In order to help ensure that I do not inadvertently participate in matters from which I am recused, I am directing the Chief of Staff and/or Ms. Greenwalt to seek the assistance of OGC/Ethics if they are ever uncertain whether or not I may participate in a matter.

4. I will provide a copy of this memorandum to my principal subordinates. I will also instruct my principal subordinates that all inquiries and comments involving any of the entities listed above should be directed to the Chief of Staff without my knowledge or involvement.
5. In consultation with OGC/Ethics, I will revise and update my ethics agreement and/or this memorandum whenever is warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties.
6. In the event of any changes to this screening arrangement, I will provide a copy of the revised screening arrangement memorandum to the Chief of Staff, OGC/Ethics, and any principal subordinates.

cc: Ryan Jackson, Chief of Staff
Sarah Greenwalt, Senior Advisor to the Administrator
Kevin S. Minoli, Designated Agency Ethics Official
Justina Fugh, Alternate Designated Agency Ethics Official

